

statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs (e) through (g) below.

(b) The agency shall (1) ensure that the amount of advance payments does not exceed the contractor's financial needs, and (2) closely supervise the contractor's withdrawal of funds from special accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover—

(1) Supplies being acquired;

(2) Any credit balance in the special account in which advance payments are deposited; and

(3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are—

(1) Personal or corporate endorsements or guarantees;

(2) Pledges of collateral;

(3) Subordination or standby of other indebtedness;

(4) Controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, retirement of stock or debt, and creation of additional obligations; and

(5) Advance payment bonds (rarely required).

(e) In an advance payment agreement with an instrumentality of the Government, a State, a local government, or an agency or instrumentality of a State or local government, the contracting officer may omit the requirement for deposit of the advances in a special account, if the official approving the advance determines that other adequate security exists to protect the Government's interest.

(f) The requirements of this 32.409–3 do not apply when using letters of credit if an agency's procedures provide for—

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

(2) The security of such deposit of public moneys in accordance with governing regulations of the Treasury Department.

(g) If a separate special account is not required; e.g., advance payment by a letter of credit, an agency may require a special account for an individual case, or classes of cases, if the circumstances warrant.

[48 FR 42328, Sept. 19, 1983, as amended at 66 FR 2138, Jan. 10, 2001]

#### **32.410 Findings, determination, and authorization.**

(a) Each determination concerning advance payments shall be supported by written findings (see 32.402(c)(1)(iii)).

(b) The following is an example of the format and text of findings, determination, and authorization with alternative words, phrases, and paragraphs to be selected to conform to the circumstances involved:

##### **FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS**

###### **FINDINGS**

(a) The undersigned hereby finds that:

(1) The \_\_\_\_\_ [insert the name of the contracting activity] and \_\_\_\_\_ [insert the name of the contractor] (have entered) (propose to enter) into (negotiated) (sealed bid) Contract No. \_\_\_\_\_, dated \_\_\_\_\_

[Summarize the specific facts and significant circumstances concerning the contract and the contractor, that, together with the other findings, will clearly support the determination below.]

(2) Advance payments (in an amount not to exceed \$\_\_\_\_\_ at any time outstanding) (in an aggregate amount not exceeding \$\_\_\_\_\_, less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor to perform under the contract. The amount does not exceed the unpaid contract price or the estimated interim cash needs arising during the reimbursement cycle.

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(3) The advance payments are necessary for prompt, efficient contract performance that will benefit the Government.

(4) The proposed advance payment clause provides for security for the protection of the Government. The clause requires that all payments will be desposited in a special account at the Contractor's financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. *[Insert the following, if applicable (The Contractor's financial management system provides for effective control over and accountability for all Federal funds under governing regulations of the Treasury Department.) (An advance payment bond is required.)]* This security is considered adequate.

(5) Advance payments are the only adequate means of financing available to the Contractor, and the amount designated in (2) above is based, to the extent possible, on the use of the Contractor's own working capital in performing the contract.

*[Insert paragraph (6), (7), or (8), as applicable].*

(6) The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (.) (research and development) work.

(7) The contract is solely for the management and operation of a Government-owned plant.

(8) The following unusual facts and circumstances favor making advance payments to the Contractor without interest:

*[List the pertinent facts and circumstances.]*

### DETERMINATION

(b) Based on the findings in (a) above, the undersigned determined that the making of the proposed advance payments, (with interest at the rate of \_\_\_\_ *[Insert the interest rate computed in accordance with 32.407]* percent on the daily unliquidated balance of the advance payments,) (without interest, except as provided by the proposed advance payment clause,) (is in the public interest) (will facilitate the national defense).

### AUTHORIZATION

(c) The advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$\_\_\_\_, are hereby authorized under (section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255)) (the Armed Services Procurement Act (10 U.S.C. 2307)) (the Extraordinary Contracting Authority of Government Agencies in Connection with National Defense Functions (50 U.S.C. 1431-1435) and Executive

Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp. pp. 72-74)) *[or, if other, cite appropriate authority]* on (terms substantially as contained in the proposed advance payment clause, a copy (an outline) of which is annexed to this authorization) (the following terms:) *[Insert the appropriate terms.]*

(All prior authorizations for advance payments under Contract No. \_\_\_\_ are superseded.)

(Signature)

(Name typed)

(Title of authorized official)

*[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Subparagraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental, or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, subparagraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include subparagraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially.]*

[48 FR 42328, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 66 FR 2138, Jan. 10, 2001]

### 32.411 Agreement for special account at a financial institution.

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

#### Agreement for Special Account

This agreement is entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, between the United States of America (the Government), represented by the Contracting Officer executing this agreement, \_\_\_\_ *[Insert the name of the Contractor]*, a \_\_\_\_ *[Insert the name of the State of incorporation]* corporation (the Contractor), and \_\_\_\_, a financial institution operating under the laws of \_\_\_\_, located at \_\_\_\_ (the financial institution).

#### Recitals

(a) Under date of \_\_\_\_, 20\_\_, the Government and the Contractor entered into Contract No. \_\_\_\_, or a related supplemental agreement, providing for advance payments